



Agenda Date: 10/7/09
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE CUSTOMER)	
ON-SITE RENEWABLE ENERGY ("CORE"))	
PROGRAM AND RENEWABLE ENERGY)	
INVESTMENT PROGRAM ("REIP") –)	ORDER
MODIFICATION TO COMPLIANCE FILING)	
REGARDING SECOND EXTENSION OF)	
COMPLETION TIMEFRAME FOR EXISTING)	DOCKET NO. EO07030203
COMMITMENTS AND ADJUSTING CAPACITY)	
BLOCKS)	

BY THE BOARD:

By this Order, the Board of Public Utilities ("Board") considers and renders a decision regarding proposed changes to its policies concerning extensions of its Customer On-site Renewable Energy ("CORE") program and Renewable Energy Incentive Program ("REIP") rebate commitment deadlines. The Board also considers and renders a decision on the expansion of the capacity block for REIP solar rebates.

Second Extension Policy

This matter relates to rebate commitments made under the CORE and REIP programs, which were designed to support the sustained and orderly development of markets for distributed renewable electric generation in New Jersey. The programs offer financial incentives to New Jersey public utility customers investing in eligible, on-site renewable electricity generation using photovoltaic, wind, biomass, and fuel cell systems. Rebates are offered to make renewable energy investments more cost-effective by offsetting a portion of the initial installation cost as well as a number of market support services, including inspections and the facilitation of registration for renewable energy credits. Rebates are intended not to cover the entire system cost, but to reduce the cost in order to make the investment available for as many ratepayers as possible.

To be eligible for a CORE or REIP rebate, an applicant must be a ratepayer of an electric or natural gas utility regulated by the Board. The programs serve residential, commercial,

institutional, and industrial market segments. The programs are available to private and public (school, State, county, and municipal) customers in all rate classes.

The CORE program historically differentiated between projects equal to or less than 10 kW and projects greater than 10 kW. There was an expectation that smaller projects could more likely be finished within a shorter timeframe. Thus, the CORE program Guidelines state that no project equal to or under 10 kW in size will be granted an extension. However, to reflect the reality that a significant number of larger applicants were for a variety of reasons unable to complete projects within the 12 months initially allowed, the Office of Clean Energy ("OCE" or "Staff") worked with the Renewable Energy Committee of the Clean Energy Council to develop "Guidelines for Project Completion Deadlines and Extensions," (November 14, 2005), subsequently updated at Customer On-site Renewable Energy (CORE) Program Update, 13-14 (Aug. 17, 2006).¹ The CORE program Guidelines state that all public projects over 10 kW in size will be given twelve calendar months, starting from the date on the rebate commitment letter, for project completion, which is defined as the date when the Program Manager² receives the final rebate application. Ibid. If the applicant cannot complete the project within the initial twelve month period, that applicant may apply for an extension. Ibid. Extension applications "must include detailed documentation regarding the reasons for delay." Ibid.

The Guidelines state that the Program Manager will grant extensions when the applicant can document significant progress toward completion of the project and the delay was unavoidable and unforeseeable at the time of the rebate application. Ibid. In determining whether significant progress has been made, the Program Manager looks at a number of specific factors: whether physical construction has started at the customer's site; whether irrevocable orders have been placed with manufacturers of the major items of equipment; whether construction permits have been approved; whether engineering and design work has started and progressed to a significant degree; and whether material has been received from the manufacturer (either on-site or in storage). Ibid. In addition to these factors, when the applicant is a public entity, the Program Manager will also consider "procurement (i.e. customer contracting) and/or related litigation delays." Id. at 14. If granted, the initial extension would be for twelve calendar months. Ibid. Under the Guidelines, a public entity may receive a second extension in "cases where litigation related to public entity contract award can be documented." Ibid. If granted, this second extension for the public entity applicant would be for six months. Ibid. The REIP Guidebook includes the same policies discussed above for the CORE program (Renewable Energy Incentive Program Guidebook, January 2009, pages 28 – 30).

The CORE program experienced exponential program growth in the four years preceding its termination. In particular, the demand for rebates from public sector applicants increased so significantly that rebates for public sector projects were reduced. In light of then-existing funding concerns and the backlog of solar projects which existed, the policy on extensions was intended to prevent the reservation of CORE funding for solar projects that are unlikely to be completed at the expense of other projects that could be approved at lower rebate levels. REIP, which has replaced CORE as the New Jersey Clean Energy Program ("NJCEP") program for funding renewable energy projects sited at the customer's location, has been designed to offer rebates at a significantly lower level than the former CORE rebates.

¹ Customer On-site Renewable Energy Program Update (August 17, 2006), <http://njcleanenergy.com/files/file/COREProgramUpdate081706.pdf>.

² Program Manager is term used in the Guidelines to refer to the Market Manager that administers the CORE Program. The Board has a contract with Honeywell International Inc. ("Honeywell") to administer the CORE Program.

The Board has recently approved requests for a second extension of the rebate commitment deadline for public projects including:

1. Wayne Energy Corporation, Docket No. EO08060423 (August 27, 2008) and
2. The New Jersey National Guard Training Center, Docket No. EO09070572 (August 19, 2009).

In each of these matters, the Board found that the projects experienced unavoidable and unforeseeable delays.

Public projects typically require more time for completion than private projects. For example, public projects are subject to public bidding requirements which add time to project development and can result in the need to rebid the project if any substantial changes are required due to site conditions or other factors. Schools have small timeframes for certain construction activities that can occur only during the summers months and therefore a small delay in obtaining a required permit could delay construction an entire year or from one summer to the next.

Based on its review of the matters cited above and its experience with the program to date, the Office of Clean Energy ("OCE") believes that the two year timeframe for completion of public projects greater than 10 kW, and the one year timeframe for completion of public projects less than or equal to 10 kW, is not sufficient in many cases. Therefore, the OCE recommends a change to the CORE and REIP program policies to provide the Renewable Energy Market Manager with the authority to approve a second extension for public projects greater than 10 kW, and a first extension for public projects less than or equal to 10 kW, provided the standards outlined below are met.

Specifically, the OCE recommends that the Board authorize the Renewable Energy Market Manager to approve a second extension of the rebate commitment deadline for public projects greater than 10 kW, of up to one additional year, and a first extension of the rebate commitment deadline for public projects less than or equal to 10 kW, of up to one additional year, based on consideration of several factors. The OCE recommends modifications of the CORE and REIP Guidelines and adoption of criteria for use by the Renewable Energy Market Manager. If approved by the Board, the OCE will monitor the Renewable Energy Market Manager to make sure the Board's policy is carried out appropriately.

Expansion of REIP Solar Capacity Block

By Order dated January 8, 2009, Docket No. EO07030203, the Board approved the 2009 NJCEP programs and budgets including the 2009 compliance filing dated November 21, 2008 submitted by Honeywell, in its role as the Renewable Energy Market Manager. Honeywell's compliance filing included a description of the REIP and established specific rebate levels for solar, wind and biomass projects.

The Board approved the compliance filing that established a standard incentive level for residential solar projects of \$1.75 per watt for new 2009 market activity. The Board-approved compliance filing stated that

The size of the first new capacity block and subsequent incentive reduction will be determined pending direction from the Board. This plan assumes the standard incentive level of \$1.75/Watt is maintained for the first 10 MW of newly approved capacity and a \$.20/Watt reduction for the next capacity block until all 2009 funding is committed.

Honeywell reviewed 2009 REIP solar activity levels taking into account the current economic conditions, the availability of NJCEP incentive funds and the pace of applications received and approved in the solar residential budget category. On the basis of this review, it believes that the current incentive levels for solar residential projects are appropriate and should not be reduced when the approved capacity reaches 10 MW. Therefore, by letter dated September 28, 2009 Honeywell recommended that the first capacity block for the solar residential budget category be expanded from 10 MW to 20 MW of approved projects.

In the January 8, 2009 Order cited above, the OCE proposed and the Board approved a process for transferring funds associated with cancelled CORE project rebates from the CORE program budget to the REIP budget. Honeywell asks the Board to utilize the process established in the January 8th Order to transfer sufficient funds to cover any additional rebates associated with the expansion of the REIP residential solar capacity block from 10 MW to 20 MW.

The proposal to expand the residential solar capacity block was presented to the RE Committee of the Clean Energy Counsel at the September 23, 2009 RE Committee meeting. There was general support for, and no participants objected, to the proposal.

Moreover, the OCE advocated the expansion of the residential solar capacity block from 10 MW to 20 MW for several reasons. Given the ongoing federal and State actions to stimulate job growth in the energy efficiency and renewable energy markets, the OCE believes the residential solar rebates should remain at the level rather than be lowered at this time. Lowering rebates during these difficult economic times may result in less construction despite the other incentives available. Moreover, current incentives have achieved a close match between rebate commitments and available funds, but sufficient funds are available through cancelled CORE program rebates to cover any additional rebates associated with expanding the solar capacity block without a rebate reduction. Based on the above the OCE recommends that the Board approve the expansion of the residential solar capacity block from 10 MW to 20 MW such that rebates levels are not reduced.

The OCE notes that this expansion will be the subject of further stakeholder discussions in the context of the preparation of recommendations for the 2010 Programs and Budgets for the New Jersey Clean Energy Program.

Discussion and Findings

As noted above, the Board has previously approved requests for second extensions of the CORE program rebate commitment deadline for public projects. In each case, the public entity made a compelling case that it experienced unavoidable and unforeseeable delays caused by factors unique to public projects that led to the Board's approval of a second extension.

The Board has recently approved a number of new programs aimed at stimulating economic development by offering increased incentives for renewable energy projects. With the goal of approving meritorious projects quickly, the Board has taken action to align its rebate approval process with the federal and State economic stimulus initiatives. Similarly, providing the Renewable Energy Market Manager the authority to approve certain extensions for public projects will streamline the review process and allow renewable energy projects to proceed to construction sooner.

Based on the foregoing, the Board **HEREBY FINDS** that the changes to the CORE and REIP program procedures discussed above are reasonable and will streamline the extension review process. The Board **HEREBY APPROVES** Staff's recommendation that the Renewable Energy

Market Manager should be granted the authority to approve a second extension for public projects greater than 10 kW, and a first extension of the rebate commitment deadline for public projects less than or equal to 10 kW, provided the standards outlined below are met. These standards will ensure that only a meritorious project that documents significant progress toward completion receives an extension. The Board HEREBY MODIFIES the CORE and REIP program Guidelines as follows:

The Renewable Energy Market Manager may grant a second extension of CORE and REIP program rebate commitment deadlines, not to exceed one year, for public projects greater than 10 kW, and a first extension of CORE and REIP program rebate commitment deadlines, not to exceed one year, for public projects less than or equal to 10 kW, provided that the project documents significant progress toward completion based on the totality of the circumstances when the delay was unavoidable, unforeseeable, or otherwise beyond the control of the applicant as evinced by the following:

1. Delays in obtaining land use, building, electrical, or environmental permits where the permitting authority is outside the jurisdiction of the public project owner or host.
2. Design or structural issues that are discovered during permitting and construction that were not known during the design phase.
3. Delays in issuing RFP's, contracts or raising financing due to delays in obtaining needed approvals via public referendums, special votes or approval from other government bodies or agencies outside the jurisdiction of the public entity hosting or owning the project.
4. Delays in obtaining materials and equipment needed to complete the project due to supply shortages affecting the market, or the failure of a particular supplier to meet originally agreed upon project delivery schedules.
5. Delays caused by a selected contractor going out of business after a contract award was granted, and the need to rebid the project to complete the work.
6. Delays due to a lawsuit counter to the development of the renewable energy project and where the delays are caused by the on-going litigation.
7. Delays in obtaining approval on financial assistance related to the project including grants or loans from a government or non-profit agency other than the NJCEP.

Applicants for second extensions shall be required to provide the following

1. Evidence that establishes the existence of the issue causing delay and in the case of an ongoing issue from the first extension, progress in efforts to resolve.
2. Demonstrate continued progress on other aspects of project development to the extent they are not delayed by the issue.
3. Attestation from the project developer, system owner and host site (if different than owner) that the project can be completed if a second extension is granted.

In all cases the public entity must demonstrate a good faith effort to resolve outstanding issues in a timely manner.

This policy is applicable to public projects only and shall take effect as of the date of this Order. The existing guidelines shall remain applicable to all non-public projects. Staff and the Program

Coordinator will continue their oversight of the Renewable Energy Market Manager to make certain that this policy is carried out properly.

The Board also concurs with OCE's recommendation to expand the capacity block for residential solar rebates. Given the State and federal efforts to stimulate job growth in the energy efficiency and renewable energy markets noted above, and the fact that sufficient funds are available through the cancellation of previously committed CORE projects to cover any expected additional costs associated with keeping residential solar rebates at current levels, the Board **HEREBY FINDS** that it is reasonable to maintain rebate levels at this time. Therefore, the Board **HEREBY APPROVES** the request to expand the first capacity block for residential solar rebates from 10 MW to 20 MW as set out in Honeywell's letter to the Board dated September 28, 2009.

To support this change, the Board **HEREBY AUTHORIZES** the transfer of funds from the CORE program budget to the REIP budget consistent with the procedures set out in the Board's January 8th Order. In the event that the funding so authorized has not been expended to fund 20 MW of residential solar rebates prior to December 31, 2009, the Board **HEREBY ORDERS** that the \$0.20 per watt reduction in rebate levels authorized by the January 8, 2009 Order in Docket No. EO07030203 shall take effect. The Board will revisit the capacity blocks for the REIP program when it considers the 2010 programs and budgets.

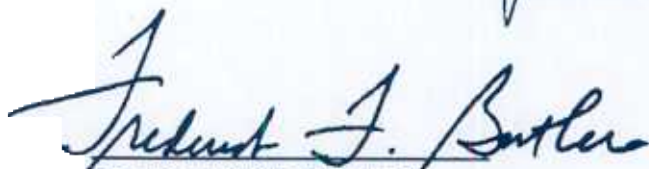
EFFECTIVE DATE:

10/19/09

BOARD OF PUBLIC UTILITIES

BY:


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PRESIDENT


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COMMISSIONER


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COMMISSIONER


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COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

